

## EXHIBIT 5

Page 1

IN THE COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY, PA  
CIVIL DIVISION

\* \* \* \* \*

\*

STAR AUTO SALES OF \*

BAYSIDE, INC., et al., \*

Plaintiffs \* Case No.

vs. \* 1:18cv05775ERKCLP

VOYNOW, BAYARD, WHYTE and \*

COMPANY, LLP, et al., \*

Defendants \*

\*

\* \* \* \* \*

DEPOSITION

OF

JACKIE CUTILLO

February 28, 2023

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by the certifying agency.

DEPOSITION

OF

JACKIE CUTILLO, taken on behalf of the Defendants  
herein, pursuant to the Rules of Civil Procedure,  
taken before me, the undersigned, Kate Formichelli, a  
Court Reporter and Notary Public in and for the  
Commonwealth of Pennsylvania, at the law offices of  
Marshall Dennehey, 2000 Market Street, Suite 2300,  
Philadelphia, Pennsylvania, on Tuesday, February 28th,  
2023, beginning at 10:21 a.m.

Job No. CS5778615

A P P E A R A N C E S

JOSEPH M. LABUDA, ESQUIRE

JEREMY M. KOUFAKIS, ESQUIRE

Milman Labuda Law Group, PLLC

3000 Marcus Avenue, Suite 3W8

Lake Success, NY 11042

COUNSEL FOR PLAINTIFFS

MAUREEN P. FITZGERALD, ESQUIRE

Marshall Dennehey Warner Coleman & Goggin, PC

620 Freedom Business Center, Suite 300

King of Prussia, PA 19406-1330

COUNSEL FOR DEFENDANTS

I N D E X

WITNESS: JACKIE CUTILLO

DISCUSSION AMONG PARTIES

7 - 8

EXAMINATION

By Attorney Fitzgerald

8 - 314

Page 5

## E X H I B I T S

			PAGE
NUMBER	DESCRIPTION	IDENTIFIED	
Cutillo			
Exhibit 1	Email	154	
Exhibit 2	Email	159	
Exhibit 3	Email	163	
Exhibit 4	Email	177	
Exhibit 5	Email	200	
Exhibit 6	Timeline	221	
Exhibit 7	Statement	249	
Exhibit 8	Checklist	261	
Exhibit 9	Email	265	
Exhibit 10	Email	267	
Exhibit 11	Email	271	
Exhibit 12	Picture	275	
Exhibit 13	Report	298	
Exhibit 14		313	

O B J E C T I O N S

ATTORNEY

PAGE

Labuda 17, 18, 34, 44, 47, 53, 54, 54, 56, 58, 59,  
62, 64, 64, 65, 66, 68, 71, 105, 110, 111, 112, 121,  
123, 133, 133, 134, 134, 156, 157, 158, 158, 169, 169,  
172, 172, 173, 173, 174, 175, 175, 181, 187, 192, 192,  
193, 194, 195, 197, 197, 198, 198, 200, 201, 205, 205,  
206, 207, 211, 211, 212, 213, 216, 216, 217, 225, 230,  
241, 242, 244, 245, 251, 269, 269, 270, 280, 281, 282,  
284, 288, 289, 290, 2 92, 293, 293, 294, 301, 303, 306,  
312, 312

MARKED QUESTIONS: 197, 198, 198, 198, 218

S T I P U L A T I O N

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(It is hereby stipulated and agreed by and between  
counsel for the respective parties that reading,  
signing, sealing, certification and filing are not  
waived.)  
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P R O C E E D I N G S

-----  
JACKIE CUTILLO,  
CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND  
HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS  
FOLLOWS:

---

COURT REPORTER:

And just before we start, when you start  
your questioning, can you just say your names?

ATTORNEY FITZGERALD:

I'm Maureen Fitzgerald, Counsel for the  
Defendant.

ATTORNEY LABUDA:

Good morning, Joe Labuda and Jeremy  
Koufakis for the Plaintiffs. Plaintiffs are also  
requesting a copy of the transcript be provided to  
them for their review and execution as part of the



1 companies.

2 Q. Who do you receive your paycheck ---?

3 A. Toyota and Subaru.

4 Q. Do you receive one check?

5 A. Two checks. A check for Toyota, a check for  
6 Subaru.

7 Q. And has that been the case since you've become a  
8 controller?

9 A. Yes.

10 Q. And that has been since April 2017?

11 A. Mid-April 2017.

12 Q. And are you saying that your entire salary ---  
13 even though you receive a compensation from two of the  
14 entities, Toyota and Subaru, it's your understanding  
15 that your salary as a controller is shared by how many  
16 of the Star entities?

17 A. All five.

18 Q. And is it shared equally among all five?

19 A. Yeah, divided by five.

20 Q. When did you begin working for any of the Star  
21 entities.

22 A. September 1st, 2005.

23 Q. And which entity was that?

24 A. Star Toyota.

25 Q. What is your highest level of education?

1 A. One year of college.

2 Q. And when did you complete that year?

3 A. 2007.

4 Q. Where did you go?

5 A. ITT Tech online.

6 Q. Is that a community college?

7 A. It's an online college. It's --- on the  
8 commercial it's ITT Tech.

9 Q. Were you pursuing any formal program or any  
10 degree?

11 A. Criminal justice.

12 Q. Was that an Associate's degree or a Bachelor's  
13 degree?

14 A. If I would have continued, Associate's degree.

15 Q. And did you attend that at night?

16 A. Yeah, virtually at night. You could like log  
17 into your classes at any point in time and take your  
18 tests and submit your reports.

19 Q. When did you graduate high school?

20 A. 2005.

21 Q. Was your job with Star Toyota the first job that  
22 you had following high school?

23 A. No.

24 Q. Where did you work before?

25 A. I worked during high school.

1 to comprehend mathematical calculations.

2 Q. Okay.

3 Math computation?.

4 A. Yeah.

5 Q. All right.

6 Anything else?

7 A. Off the top of my head.

8 Q. Aside from whatever you learned in your high  
9 school math courses, have you taken any other  
10 accounting courses anywhere else?

11 ATTORNEY LABUDA:

12 Objection, but you can answer.

13 THE WITNESS:

14 Not that I remember.

15 BY ATTORNEY FITZGERALD:

16 Q. So is it fair to say, as you sit here today,  
17 you've never taken any formal instruction or any  
18 classes in forensic accounting?

19 A. No.

20 Q. Tax accounting?

21 A. No.

22 Q. Cost accounting?

23 A. No.

24 Q. Banking?

25 A. No.

1 Debbie.

2 Q. So your next position was assistant controller?

3 A. Should have been, yes.

4 Q. What do you mean?

5 A. I was supposed to assist Debbie.

6 Q. Okay.

7 Did you actually function in that capacity?

8 A. No.

9 Q. What did you understand that your role or  
10 responsibility was going to be as assistant  
11 controller?

12 A. She was supposed to teach me what I needed to  
13 know.

14 Q. So this would have been after Vivian was  
15 terminated?

16 A. Correct.

17 Q. And Debbie was the controller for, at that time,  
18 all five dealerships?

19 A. That is correct.

20 Q. And did you understand that your role was going  
21 to be her assistant?

22 A. Correct.

23 Q. And was it the assistant for all five dealerships  
24 or just certain dealerships?

25 A. All five.

1 Q. And did you actually assume that role? Did that  
2 actually happen where you, for whatever period of  
3 time, worked as her assistant controller?

4 A. She was instructed to train me and teach me  
5 everything that I needed to know.

6 Q. At what point did you then step into the  
7 assistant controller role?

8 A. She didn't teach me.

9 Q. I know. At what point did you step into the  
10 role? Like, when did you stop doing your deal posting  
11 and commission function?

12 A. After she was terminated.

13 Q. Okay.

14 So when you were going to become the assistant  
15 controller, were you still going to do the deal  
16 posting and commission function?

17 A. It hadn't been worked out.

18 Q. So she was terminated, I believe, in, like, mid-  
19 April of 2017?

20 A. That is correct.

21 Q. So when do you recall being told that you were  
22 going to be the assistant controller in relation to  
23 that date?

24 A. January, February maybe.

25 Q. I think you told me when you were the deal poster

1 A. But it's also probable.

2 Q. It's also what?

3 A. She was not the best-looking individual.

4 Q. Okay.

5 So you believe she was jealous of you?

6 A. My looks and maybe --- sure, maybe intimidated  
7 maybe, I don't know, threatened. Who knows?

8 Q. When Debbie was terminated in April of 2017, fair  
9 say that then you became the controller?

10 A. That's correct.

11 Q. Okay.

12 And was that the first time in your career that  
13 you've ever supervised anyone?

14 A. That's correct.

15 Q. And you were the controller for five Star  
16 dealerships or six?

17 A. Well, five.

18 Q. Okay.

19 Mitsubishi was not in existence?

20 A. No.

21 Q. And you've functioned as the controller since  
22 mid-April 2017?

23 A. Yes.

24 Q. Okay.

25 And who do you report to?

1 A. A while.

2 Q. Huh?

3 A. A long time.

4 Q. So that's something you've had in place before  
5 you became a ---?

6 A. Uh-huh (yes). But Vivian was a notary, so I only  
7 notarized once in a while.

8 Q. And then you said you verbally handled deals when  
9 your employees have questions?

10 A. I'll intervene, yes.

11 Q. And you said that you supervised 16 to 17  
12 employees?

13 A. Uh-huh (yes).

14 Q. Would those be the employees that worked in the  
15 office?

16 A. That work in my office.

17 Q. Okay.

18 And that would be the accounting office?

19 A. That is correct.

20 Q. And do those employees report directly to you?

21 A. Yes.

22 Q. Okay.

23 Do they report to anybody else?

24 A. They can report --- they can talk to any of the  
25 owners.

1 Q. Okay.

2 Other than the owners and you, do they report to  
3 anybody else?

4 A. No.

5 Q. Are they supervised by anyone else other than you  
6 and the owners?

7 A. No.

8 Q. Did you understand that that same hierarchy was  
9 in place when Vivian and Debbie were controllers? In  
10 other words, the office staff reported to them, and  
11 they reported to the owners?

12 A. Huh?

13 Q. When Vivian and Debbie were the controllers  
14 before you, ---

15 A. Okay.

16 Q. --- did you understand that that same system was  
17 in place where Vivian and Debbie supervised the office  
18 staff?

19 A. Okay.

20 Q. And Vivian and Debbie reported to the owners?

21 A. That is correct.

22 Q. Okay.

23 So it's the same as what exists under you?

24 A. No, because my staff can go to my owners and  
25 people can go to the owners.



1 Q. Okay.

2 Were the staff not permitted to go to the owners  
3 when Vivian and Debbie were the controllers?

4 A. No.

5 Q. So it's the same system?

6 A. Yeah, sure. Yes..

7 ATTORNEY LABUDA:

8 And Maureen, just whenever it's good for  
9 a break --- it's 1:15. I think downstairs closes at  
10 2:00, my recollection, ---

11 ATTORNEY FITZGERALD:

12 Okay.

13 ATTORNEY LABUDA:

14 --- so whenever is a good time.

15 ATTORNEY FITZGERALD:

16 Yeah, maybe like another five minutes  
17 and then we can go.

18 ATTORNEY LABUDA:

19 Okay.

20 BY ATTORNEY FITZGERALD:

21 Q. As part of becoming a controller, you received  
22 training by Voynow?

23 A. That is correct.

24 Q. Okay.

25 And do you remember who specifically from Voynow

1 was involved in training you?

2 A. Yes.

3 Q. Who was that?

4 A. Bobby.

5 Q. Bob Seibel?

6 A. Yes. David Kumar, Tim Kravitz.

7 Q. Anybody else?

8 A. No. They're the ones that trained me.

9 Q. Other than those three gentlemen from Voynow, did  
10 you receive training from anybody else about the  
11 controller function?

12 A. No.

13 Q. What access do you have as a controller in the  
14 Reynolds system?

15 A. I'd say --- I don't know. I don't know. I don't  
16 have full access.

17 Q. Okay.

18 Do you have remote access?

19 A. Yes.

20 Q. Did you have remote access when you became a  
21 controller?

22 A. No.

23 Q. When did you get remote access?

24 A. COVID.

25 Q. Did other employees get remote access as a result

1 of COVID?

2 A. No. Not that I'm aware of. I don't know. I  
3 don't know who he gave remote access to. It's not my  
4 job.

5 Q. Have you had any contact or communications with  
6 anyone from Reynolds and Reynolds as far as your role  
7 as a controller or understanding your duties as a  
8 controller?

9 A. Like, if I have a question, I can call them.

10 Q. So is there like a point person that you have at  
11 Reynolds and Reynolds, or do you just call a generic  
12 line and whoever is there answers?

13 A. 1-800, yeah.

14 Q. Do you know what version of Reynolds and Reynolds  
15 Star has?

16 A. I don't understand the question. What do you  
17 mean?

18 Q. Are you aware of different versions or types of  
19 dealer management systems for dealerships that are  
20 provided for Reynolds and Reynolds?

21 A. There's two, to my knowledge.

22 Q. And what are the two?

23 A. Blue Screen and Ignite.

24 Q. And which one does Star have?

25 A. I have Blue screen and I have Ignite.

1 A. I don't know. I'm not in charge of that.

2 Q. Did you use --- as part of your investigation  
3 into any of the things at issue in this case, did you  
4 use that Ignite program?

5 A. No. I don't know. Not that I'm aware. I don't  
6 remember.

7 Q. Is it possible?

8 ATTORNEY LABUDA:

9 Objection. You can answer.

10 THE WITNESS:

11 I don't know.

12 BY ATTORNEY FITZGERALD:

13 Q. How did you become aware --- you said two years  
14 ago you had access to it. How did you become aware of  
15 it?

16 A. Because I called Reynolds to ask them a question  
17 and they said, do you have Blue Screen or Ignite? And  
18 I said Blue Screen. They're like, if you have Ignite,  
19 we can assist you in fixing the routing that's being  
20 confused.

21 Q. And as part of your investigation into the  
22 schemes, did you at any point time call up Reynolds  
23 for assistance?

24 A. Yeah, for them to generate reports.

25 Q. Okay.

1 And do you remember how many times that happened?

2 A. I don't know. I don't remember off the top of my  
3 head.

4 Q. Did it happen more than five times?

5 A. No. Maybe a couple. I don't know.

6 Q. And why did you have to call Reynolds to generate  
7 reports? Why were you unable to do it on your own?

8 A. Because Reynolds needs to generate and create ---  
9 create and generate that --- a report.

10 Q. Do you have a recollection of the specific  
11 reports you asked Reynolds to generate that you were  
12 unable to generate?

13 A. I don't know how to generate a report. Reynolds  
14 does it.

15 Q. As the controller, you don't know how to generate  
16 a report in Reynolds?

17 A. Reynolds --- I don't know if you understand the  
18 context of generating a report.

19 Q. Why don't you tell me what you mean when you use  
20 the word generating a report?

21 A. If I call Reynolds and I ask them to make a  
22 report with certain --- with specific parameters, they  
23 create it.

24 Q. Okay.

25 And it's not something you are able to do on your

1 own?

2 A. No.

3 Q. Are you able to recall any specific parameters  
4 that you gave to Reynolds and Reynolds when you  
5 requested that they generate a report for you?

6 ATTORNEY LABUDA:

7 Objection, but you can answer.

8 THE WITNESS:

9 I don't know. I don't know. I don't  
10 remember.

11 BY ATTORNEY FITZGERALD:

12 Q. How many reports did Reynolds and Reynolds  
13 generate for purposes of your investigation in this  
14 case?

15 A. I don't know. Maybe two, maybe three.

16 Q. And do you know which schemes they were  
17 applicable to that you were investigating that you  
18 asked for those two to three reports?

19 A. I don't remember. You'd have to show me  
20 documents, then I could tell you.

21 Q. Well, I'll just rattle off the names of the  
22 schemes --- the customer claims. With Filardo and  
23 Subaru?

24 A. I believe so, but I don't remember off the --- I  
25 don't want to give you an answer that I'm not a

1 A. It's possible, but I'm not sure. They might have  
2 just been able to generate it based on what I was  
3 asking. I don't think I had to give specific  
4 parameters. They might have just did it themselves.

5 Q. Do you know one way or the other?

6 A. I don't ---.

7 Q. Is there a manual onsite that Star has regarding  
8 the Reynolds system?

9 A. There's a digital manual for Reynolds and  
10 Reynolds.

11 Q. Okay.

12 And is that something you've referred to?

13 A. I have.

14 Q. And have you referred to it since you've become a  
15 controller or had you referred to it before?

16 A. No, since I became a controller.

17 Q. Do all office employees have access to that  
18 manual or just you as a controller?

19 A. No. If they have a question and I want --- we  
20 would look it up in the book, in the manual. If I  
21 don't know the answer, and even if I do know the  
22 answer, we would verify it in the book.

23 Q. And as best as you recall, is the version of the  
24 Reynolds and Reynolds system that Star has, is it the  
25 same version since you've been employed or has it been

1 Q. Is there anybody specific you recall meeting  
2 with?

3 A. We made a police report for a fraudulent check  
4 with the name of an employee of Star Toyota.

5 Q. And who was that?

6 A. Gabriel Zambrana.

7 Q. When you say we made a police report, is that a  
8 report that you completed?

9 A. Me and Mike --- I went with Michael Koufakis.

10 Q. Okay.

11 Do you remember who at the NYPD you met with?

12 A. A cop that was there. I don't remember who it  
13 was.

14 Q. Okay.

15 Other than that policeman regarding Gabriel  
16 Zambrana, was there any other law enforcement person  
17 that you recall meeting with regarding employee theft  
18 or fraud?

19 A. I went with Mike K. to meet Mrs. Wright, a  
20 District Attorney.

21 Q. Regarding what?

22 A. Regarding --- which scheme was that, which fraud?  
23 I want to say Subaru.

24 Q. So would that be regarded regarding Doug Filardo?

25 A. I believe so.



1 Q. Would it also be regarding Vivian?

2 A. I don't believe so. I don't remember.

3 Q. Did you say you went with Michael Koufakis?

4 A. Yes.

5 Q. Do you remember when?

6 A. I want to say 2018.

7 Q. Any other meetings that you recall?

8 A. I met with the Assistant District Attorney  
9 recently, like within the last year.

10 Q. And who was that?

11 A. Aharon Diaz.

12 Q. Is this the Queens ---

13 A. Yes.

14 Q. --- Assistant D.A.? And Ms. Wright was also from  
15 Queens?

16 A. Yes.

17 Q. And you said that was I think within the last  
18 year?

19 A. Within the last year.

20 Q. And did you go alone?

21 A. On some occasions.

22 Q. How many times did you meet with Mr. Diaz?

23 A. Maybe five times.

24 Q. So five times in 2022, is that your recollection?

25 A. 2022, maybe the end of '21, but 2022.

1 Q. And regarding which employees?

2 A. That one is Carmen Jones, Debbie, ---.

3 Q. Carmen and Debbie?

4 A. Right.

5 Q. And nobody else that you recall?

6 A. Yeah, I believe those.

7 Q. Okay.

8 Any other meetings that you recall with any other  
9 law enforcement representative?

10 A. Off the top of my head, besides those three, no,  
11 not off --- no, not off the top of my head.

12 Q. So I asked about meetings. Would your answers be  
13 the same if I said any communications that you've had?  
14 So, for instance, email or telephonic communications?

15 A. Yeah.

16 Q. Do you recall ---?

17 A. I wouldn't --- yeah, I would say so.

18 Q. Okay.

19 And it would be the police officer regarding  
20 Gabriel Zambrana, who's a police officer name you  
21 didn't remember, Ms. Wright regarding Doug Filardo and  
22 Mr. Diaz regarding Carmen and Debbie?

23 A. Correct.

24 Q. You don't believe you ever communicated with  
25 anybody else in law enforcement?